



4184-34-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Numbers: 93.581, 93.587, 93.612]

Request for Public Comment on the Proposed Adoption of Administration for Native Americans Program Policies and Procedures

AGENCY: Administration for Native Americans, ACF, HHS

ACTION: Notice for Public Comment

SUMMARY: Pursuant to Section 814 of the Native American Programs Act of 1974 (NAPA), as amended, the Administration for Native Americans (ANA) is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, general statements of policy, and rules of agency procedure or practice that affect programs, projects, and activities authorized under the NAPA, and to give notice of the final adoption of such changes at least 30 days before the changes become effective. In accordance with notice requirements of NAPA, ANA herein describes its proposed interpretive rules, general statements of policy, and rules of agency procedure or practice as they relate to the Fiscal Year (FY) 2014 Funding Opportunity

Announcements (FOA) for the following programs: 1) Social and Economic Development Strategies (hereinafter referred to as SEDS), HHS-2014-ACF-ANA-NA-0776; 2) Sustainable Employment and Economic Development Strategies (hereinafter referred to as SEEDS), HHS-2014-ACF-ANA-NE-0779; 3) Native Language Preservation and Maintenance (hereinafter referred to as Language Preservation), HHS-2014-ACF-ANA-NL-0778; 4) Native Language Preservation and Maintenance – Esther Martinez Immersion (hereinafter referred to as Language – EMI), HHS-2014-ACF-ANA-NA-0780; and 5) Environmental Regulatory Enhancement (hereinafter referred to as ERE), HHS-2014-ACF-ANA-NR-0777.

DATES: Submit written or electronic comments on this Notice, on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

ADDRESSES: Send comments in response to this notice via email to Lillian A. Sparks, Commissioner, Administration for Native Americans, at ANACommissioner@acf.hhs.gov. Comments will be available for inspection by members of the public at the Administration for Native Americans, 901 D Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Carmelia Strickland, Director, Division of Program Operations, ANA, (877) 922-9262.

SUPPLEMENTARY INFORMATION:

A. Name Change of one FOA: ANA proposes to change the name of the program titled "Native American Language Preservation and Maintenance – Esther Martinez Initiative" (HHS-2014-ACF-ANA-NL-0780) to "Native American Language Preservation and Maintenance – Esther Martinez Immersion." The FOA will retain the same acronym "EMI." This proposed change is to address the fact that EMI is no longer a temporary initiative, but an ongoing program in which immersion is a key goal.

B. Administrative Policies: ANA proposes to clarify the conflict of interest standards published in the 2013 FOAs [announced in 78 FR 13062-13067] to ensure it aligns with the rule at 45 CFR 1336.50 (f), which authorizes the Office of Chief Executive of a federally-recognized Indian tribal government to be paid salary and expenses with ANA grant funds, provided such costs are related to a project funded under ANA FOAs and that the costs exclude any portion of salaries and expenses that are a cost of general government. Given this rule regarding the allowable use of grant funds, we propose a limited exception to previously published conflict of interest standards which did not include the regulatory exception applicable to the Chief Executive of federally recognized Indian tribes.

Conflict of Interest Standards

Under the standard terms and conditions for discretionary HHS awards (Grants Policy Statement, page II-7 at

<https://www.acf.hhs.gov/grants/terms-and-conditions>), grant recipients are required to establish safeguards to prevent employees, consultants, members of governing bodies and others who may be involved in grant-supported activities from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties. Therefore, with one exception, staff employed through an ANA-funded project cannot also serve as a member of the governing body for the applicant organization. Under the exception, as authorized by 45 CFR 1336.50 (f), the Chief Executive of a federally-recognized Indian tribal government may be paid salary and expenses with ANA grant funds, provided such costs are not a cost of general government and are related to the ANA-funded project.

During the award negotiation phase, ANA will ask the prospective recipient to modify project personnel if a proposed staff member is also a member of the applicant organization's governing body. In addition, there should be a separation of duties between staff and the governing body within an organization to ensure the integrity of internal controls and to minimize disruptions in the continuity of operations.

C. Federal Evaluation: ANA proposes to include the following language in *Section I.*

Funding Opportunity Description in FY14 FOAs for the programs listed in the summary section above, with the exception of the SEEDS FOA, HHS-2014-ACF-ANA-NE-0779. The SEEDS FOA will retain the same federal evaluation requirements as published in the FY13 SEEDS FOA, HHS-2013-ACF-ANA-NE-0588, available under "Prior Year Funding Opportunities" at <http://www.acf.hhs.gov/grants/open/foa/>.

ANA is required by statute to evaluate the impact of its funding. To fulfill this requirement, ANA will implement a federally-sponsored evaluation strategy to assess

the success and impact of approved projects. The federal evaluation strategy will include grantee-level documentation. In accepting a grant award, all grantees agree to participate fully in the federal evaluation if selected, and to follow all evaluation protocols established by ANA or its designee contractor.

D. Name Change of one Disqualification Factor: ANA proposes to change the name of the disqualification factor titled "Board Documentation" to "Assurance of Community Representation on Board of Directors," which will appear in all FY14 ANA FOAs in order to further clarify what is being requested of applicants regarding demonstration of community representation. The content of this requirement will not change, and it will not apply to tribes or Native Alaska villages. All application disqualification factors will appear in *Section III.3. Other* of the FOAs.

E. Projects Ineligible for Funding: ANA proposes revising language in this section of *Section III.3. Other* to provide clarification on three of the types of projects that ANA will not fund under regulations at 45 CFR 1336.33 (b), as follows:

1. Projects for which a grantee purchases from a third party training and technical assistance (third party T/TA) that is intended to be provided to other tribes or Native American organizations or to non-members of the grantee organization or where such training or technical assistance is duplicative of ANA funded training and technical assistance available to tribes and other entities that are eligible to apply for ANA funding. This does not apply to

‘train-the-trainer’ capacity building projects.

2. The support of ongoing social service delivery programs or the expansion, or continuation, of existing social service delivery programs. This means that ANA will not fund projects that provide or expand ongoing services that involve cash transfers or other material assistance such as food, medicine, child care, or income support to individuals.
3. Projects from consortia of tribes that do not include documentation from each participating consortium member specifying their role and support. Projects from consortia must have goals and objectives that will encompass the participating communities. ANA will not fund projects by a consortium of tribes that duplicate activities for which participating member tribes also receive funding from ANA.

F. Community Involvement: ANA proposes language in *Section IV.2 The Project Description* and *Section V.1 Criteria* to clarify that community involvement in the development of the project is required as well as community involvement in the implementation of the project.

G. Page Limits for SEEDS Applications: ANA proposes to change the maximum page limit for applications submitted in response to the FY2014 SEEDS FOA (HHS-2014-ACF-ANA-NE-0779) from 200 pages to 150 pages. This page limit excludes

required Standard Forms (SFs) and OMB-approved forms, including ANA's Objective Work Plan (OWP). The change makes the 150 page limit consistent with in all ANA FOAs. Applications that exceed the page limit will have excess pages removed.

H. Two-File Upload Requirement: For FY13, ACF introduced a required two-file format for electronically submitted applications. In order to reduce the technical burden on such applicants and to ensure that a lack of technical resources not otherwise required of applicants does not unintentionally act to disqualify an otherwise eligible applicant from applying under ANA FOAs. **Applicants submitting their applications electronically under ANA FOAs are exempt from the two-file format requirement.** Formatting instructions will be provided in all ANA FOAs in Section IV.2. Form and Content of Application Submission. Formatting and page limitation instructions must be followed or applicants risk having excess pages removed from their applications.

I. Outcomes Expected for SEEDS Applications: ANA proposes to require all SEEDS applicants to address two program-wide performance outcomes including full-time equivalent (FTE) positions and the number of Native Americans employed by the funded project. The other three program-wide performance outcomes must be addressed only if they are applicable. Under the FY2013 SEEDS FOA, applicants were required to address 1 of the 5 SEEDS specific outcomes.

J. Protection of Sensitive and/or Confidential Information: ANA proposes to add the following requirement to applications submitted under all FY14 FOAs in order to ensure the protection of confidential and/or sensitive information:

If any confidential or sensitive information will be collected during the course of the project, whether from staff (e.g., background investigations) or project participants, and/or project beneficiaries, provide a description of the methods that will be used to ensure that confidential and/or sensitive information is properly handled and safeguarded. Also provide a plan for the disposition of such information at the end of the project period.

K. ANA Application Evaluation Criteria

The following changes will appear in *Section V.I Criteria* of the FY 14 FOAs:

- 1. Changes to Criteria:** ANA proposes to move the concept articulated previously in the 'Project Integration' evaluation criterion and address the substance of such criterion under the OWP. The evaluation criterion appears in the FOAs at *Section V.I Application Review Information, Criteria*. Consequently, the OWP will be moved from the 'Approach' criterion and will be evaluated using a stand-alone evaluation criterion. No additional requirements will be added to the OWP or to any other component of the FOA as a result of this change. The OMB-approved OWP information collection requires project goals, objectives, results expected, benefits expected, and activities to be addressed. This change is being proposed to more clearly articulate that the integration of multiple project components that will receive

focused attention during the objective review.

- 2. Titles and Assigned Weight:** ANA proposes to adjust the maximum point values of the evaluation criteria scores to further prioritize elements that are important to project monitoring and success. For all FY14 FOAs, ANA proposes to use the following criteria values:

Need for Assistance – 10 points;
Outcomes Expected – 25 points;
Project Approach – 30 points;
Objective Work Plan – 25 points
Budget and Budget Justification – 10 points

- 3. Scoring Guidance:** ANA proposes to provide guidance to reviewers to utilize the table below when allocating points for applications in order to ensure consistency and equivalence in the scoring among different panels and panel reviewers. ANA proposes to add the following table to all FY14 FOAs:

Excellent	93 - 100
Very Good	86 - 92
Good	78 - 85
Fair	70 - 77
Needs Significant Improvement	0 - 69

- L. ANA Internal Review of Proposed Projects:** ANA proposes to clarify the language in *Section V.2. Review and Selection Process* of the FOAs to clarify of the scope of ANA's discretion to be exercised in making funding decisions as follows:

Based on the ranked order of applications, ANA staff will perform an internal review and analysis of the applications ranked highest as a result of the panel's review and scoring in order to determine the application's consistency with the purposes of NAPA, all relevant statutory and regulatory requirements, and the requirements of the relevant FOA. ANA's Commissioner has discretion to make all final funding and award decisions. In the exercise of such discretion the Commissioner will consider:

- Whether the project, as determined based on ANA's administrative and programmatic expertise, does not to further the purpose of the funding opportunity as described in *Section I. Funding Opportunity Description*.
- Whether the project is determined to be unlikely to be successful or cost effective based on the application submitted for evaluation in response to *Section IV.2. Project Description and Budget and Budget Justification*.
- Whether the project allows any one community, or region, to receive a disproportionate share of the funds available for award.
- Whether the projects is essentially identical or similar in whole or in part to previously funded projects proposed by the same applicant or activities or projects proposed by a consortium that duplicate activities for which any consortium member also receives or has received funding from ANA.
- Whether the project provides couples or family counseling activities that are medically-based.

- Whether the project originated and was designed by consultants, who have provided a major role for themselves in the performance of the project, and who are not members of the applicant organization, tribe, or village.
- Whether the project contains contingent activities that may impede, or indefinitely delay, the progress of the project.
- Whether the project has the potential to cause unintended harm to participants, or that could negatively impact the safety or privacy of individuals.
- Whether the project may be used for the purpose of providing loan capital. Federal funds awarded under this FOA may not be used for the purpose of providing loan capital. This restriction is not related to loan capital authorized under Sec. 803A of NAPA [42 U.S.C. 2991b-1(a)(1)] for the purpose of the Hawaiian Revolving Loan fund.
- Whether the project includes human subject research as defined at 45 CFR 45.102 (d) and (f).
- Whether the project is duplicative of projects funded by other federal agencies.

Please note: The funding restriction applied in prior years' FOAs on "Projects that seek to revive Native American languages that do not have any living speakers" has been removed from the above list. Projects with this focus are now eligible to receive funding under Language Preservation and EMI FOAs.

M. Reporting: ANA proposes to change the frequency of reporting requirements from quarterly to semi-annual for the Objective Progress Reports (OPR) and Financial

Status Reports (FSR). Therefore, grantees will be required to submit an OPR and an FSR every 6 months instead of every 3 months. Please note that grantees will still be required to submit a Federal Financial Report - Federal Cash Transaction Report SF-425 (FFR-FCTR) to the Division of Payment Management (DPM) on a quarterly basis.

STATUTORY AUTHORITY: This notice for public comment is required by Section 814 of the Native American Programs Act of 1974 (NAPA), as amended.

Lillian A. Sparks Robinson
Commissioner
Administration for Native American

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